Defense Acquisition University

Weapon Systems Acquisition Reform Act of 2009

(Public Law 111-23, 22 May 2009)

Bradford Brown
Director for Acquisition & Program management

Weapon Systems Acquisition Reform Act of 2009

Title I. Acquisition Organization:

- 101. Cost Assessment and Program Evaluation
- 102. Directors of Developmental Test and Evaluation and Systems Engineering
- 103. Performance Assessments and Root Causes Analysis for Major Defense Acquisition Programs (MDAPs)
- 104. Assessment of Technological Maturity of Critical Technologies of MDAPs by the Director of Defense Research and Engineering
- 105. Role of the Commanders of the Combatant Commands in Identifying Joint

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Title II. Acquisition Policy:

- 201. Consideration of Trade-offs Among Cost, Schedule, and Performance Objectives in DoD Acquisition Programs
- 202. Acquisition Strategies to Ensure Competition Throughout the Life Cycle of MDAPs
- 203. Prototyping Requirements for MDAPs
- 204. Actions to Identify and Address Systemic Problems in MDAPs Prior to Milestone B Approval
- 205. Additional Requirements for Certain MDAPs
- 206. Critical Cost Growth in MDAPs

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Title III. Additional Acquisition Provisions:

- 301. Awards for DoD Personnel For Excellence in the Acquisition of Products and Services
- 302. Earned Value Management

Sec. 101. Cost Assessment & Program Evaluation

Creates new position requiring confirmation by Senate: Director of Cost Assessment & Program Evaluation.

- **Responsibilities, functions and personnel of the office of Director, Program Analysis transferred to new position (to include the CAIG)**
- **Two deputies**
  - **Director, Cost Assessment**
  - **Director, Program Evaluation**
- **Impact:**
  - **Position of Director, PA&E has rotated from Director to Assistant Secretary Level (latter requiring Senate confirmation) since created as ASD (Systems Analysis) in 1965**
  - **May put teeth into "CAIG estimate" vs. Component Cost Position**
  - **Requires annual report summarizing cost estimation and cost analysis activities (submitted to concurrently to SECDEF, USD(Comptroller), USD(AT&L), and congressional defense committees**
  - **Requires report to SECDEF on tracking and assessing operations and support costs by 22 May 2010, including advisability of O&S cost baselines.**

Sec. 102. Directors of DT&E and Systems Engineering

- **Creates Director, DT&E**
  - **Appointed by SECDEF (may be dual hatted with TRMC)**
  - **Develops policies and guidance for DT&E; approves DT portion of TEMP for MDAPs**
- **Creates Director, Systems Engineering (SE)**
  - **Appointed by SECDEF**
  - **Develops policies and guidance for SE; approves SEP for MDAPs**
- **Requires joint coordination, joint DT&E/SE guidance, and joint annual report to Congress**
- **Requires CAE's with MDAPs to appropriately resource DT&E and SE organizations, and report to the Directors within 180 days that they have done so**
- **Impact:**
  - **Codifies DT&E and SE organizations in Title 10**
  - **Requires additional reports to Congress**
  - **Currently there are Directors for DT&E and SE in OUSD(AT&L) with basically the same functions required by the legislation**

Sec. 103. Performance Assessments & Root Cause Analysis

- **Requires SECDEF to appoint a Senior Official in OSD as responsible for conducting and overseeing performance assessments and root cause analysis**
  - **Conducts performance assessments of MDAPs**
  - **Conducts "root cause analysis" of increases in procurement costs per Section 206.**
- **Impact:**
  - **Performance Assessment (similar to current APB/DAES reporting) and Root cause analysis defined in the legislation**
  - **Requires additional report to Congress**
  - **Currently there is a Director for Analysis Review and Assessment (ARA) in OUSD(AT&L)**

Sec. 104. Assessment of Technology Maturity

- Requires Director, Defense Research & Engineering (DDR&E) to periodically review and assess the technology maturity and integration risk of critical technologies of MDAPs
- Requires annual report to Congress on technological maturity and integration risk
- Requires report to Congress on additional resources required to implement the legislation to include TRAs and the "DoDI 5000"
- Requires DDR&E develop knowledge-based standards against which to measure technology maturity and integration risk
- Impact:
  - Technology Readiness Assessment (TRA) Deskbook may need updating
  - DoDI 5000.02 now provides for DDR&E independent TRA's of MDAPs prior to Milestones B and C
  - Requires additional reports to Congress

Sec. 105. Role of Commanders of Combatant Cmds

- Requires JROC to seek and consider input from the COCOM commanders on –
  - Current or projected missions or threats that would inform the assessment of a new joint military requirement
  - Necessity and sufficiency of a proposed joint military requirement in terms of current and projected missions or threats
  - Relative priority of a proposed joint military requirement in comparison with other joint military requirements within the theater of operations
  - Ability of partner nations to assist in meeting the joint military requirement or the benefit, if any, of a partner nation assisting in development or use of technologies developed to meet the joint military requirement
- Requires GAO to report on implementation NLT 2011
- Impact:
  - Appears to be no major change to current process
  - COCOMs now play a major role in JCIDS

Sec. 201. Trade-Offs in Cost, Schedule and Performance

- **Requires mechanisms to consider cost, schedule and performance trade-offs during development of MDAPs**
  - **Cost and schedule matters must be considered before performance objectives are established**
  - **JROC must seek and consider input from COCOMs on joint requirements**
  - **JROC must consult with COCOMs, USD(AT&L), and Dir, CAPE to consider trade-offs in cost, schedule and performance and establish IOC for joint requirements**
  - **Use evolutionary acquisition and defer immature technologies until later increments**
  - **Dir, CAPE must develop study guidance for AoA that considers cost, schedule and performance trade-offs for each considered alternative**
  - **MDA must certify at MS B that cost, schedule and performance trades were made to ensure affordability**
- **Impact:**

  No major change to current process. Proper implementation of DoDI 5000.02 and JCIDS would ensure trade-off process is conducted.

Sec. 202. Ensuring Competition…

- Requires acquisition strategies to ensure competition, or the option for competition, at both prime and subcontract level
- Adequate documentation is required for rationale for selection of subcontract tier or tiers
- Provides measures to ensure competition "if such measures are cost-effective"
- Requires fair and objective "make-buy" decisions by primes
- Contracts for maintenance and sustainment awarded on competitive basis to maximum extent practicable
- **Impact:**
  - **Potential issues with PM dealing direct with subs?**

Sec. 203. Prototyping Requirements for MDAPs

- Requires competitive prototyping of systems or critical subsystems before Milestone B approval, unless waived by MDA
- Congress must be notified within 30 days of waiver
- A prototype must be produced before Milestone B even if competitive prototyping is waived
- GAO must review waivers and submit assessment to Congress
- Impact:
  - Current policy calls for competitive prototyping "prior to or through Milestone B"
  - Obtaining funds may be helped by legislative requirement

Sec. 204. Actions to Identify and Address Systemic Problems Prior to Milestone B

- Revises PM notification of failure to achieve MS A certification requirement of at least 25% for cost to include a schedule deviation of no more 25%.
- Requires MDA to determine "root cause" of cost or schedule growth as reported by PM and identify appropriate performance measures for remainder of development program, and report such to Congress
- Provides for termination or withdrawal of MS A approval if MDA determines in interest of national defense
- Also applies to programs that began prior to requirement for MS A certification and have not yet reached MS B
- Impact:
  - Root cause may include external factors beyond PM's control
  - Provisions for program termination or withdrawal of MS A approval are not significant changes to current law

Sec. 205. Additional Requirements for Certain MDAPs

- **Revises Milestone B Certification (10 USC 2366b)**
  - **Adds completion of PDR and Post-PDR Assessment**
  - **Adds completion of independent TRA by DDR&E**
  - **Requires MDA waivers to be provided to Congress**
  - **Requires MDA to review waived programs annually until all waived certification areas are satisfied**
  - **Requires waiver status in all budget documentation**
- **Requires semi-annual reviews of programs that experience critical cost growth under Nunn-McCurdy provisions, until one year after date the program receives a new milestone approval**
- **Extends MS certification requirements to programs that received MS B approval prior to enactment of the requirement and have not yet reached MS C.**
- **Impact:**
  - **PDR, Post PDR assessment is now required by DoDI 5000.02**
  - **Independent TRA by DDR&E is currently "optional"**
  - **Additional programs will have to be assessed for MS B**

Sec. 206. Critical Cost Growth in MDAPs

- **Adds new section 2433a to 10 USC 2433 (Unit Cost Reports).**
  - **Requires determination of "root cause" for critical cost growth threshold breaches (critical Nunn-McCurdy breaches)**
  - **Adds need to reduce funding for other programs to assessment areas**
  - **Adds Presumption of Termination: SECDEF shall terminate program unless certified to Congress – adds program priority over programs that will loose funding as certification item**
  - **Programs that are not terminated – certification and root cause analysis provided to Congress**
  - **For restructured programs, most recent milestone approval is rescinded and new milestone review must be conducted**
  - **New contractual actions prohibited prior to receiving new milestone approval – unless MDA grants an exception**
  - **Both certification and termination actions require reports to Congress**
- **Impact:**

Sec. 207. Organizational Conflicts of Interest

- For MDAPs, requires revisions to DFARS to provide uniform guidance and tighten existing requirements for organizational conflicts of interest by contractors
- Requires Panel on Contracting Integrity (established by NDAA FY 2007) to recommend to SECDEF measures to eliminate or mitigate organizational conflicts of interest
- Panel on Contracting Integrity may be terminated when SECDEF determines that concerns about contracting integrity have been mitigated, but not until after 31 Dec 2011

Impact: Administrative rule making

Sec. 301. Awards for DoD Personnel for Excellence in Acquisition of Products and Services

- **SECDEF to establish award program for individuals and team, civilians and military**
- **Includes cash bonuses authorized by any other provision of law**
- **Impact: Everyone likes to be rewarded – however, DoD has plenty of award programs ongoing that comply with this legislation**

Sec. 302. Earned Value Management

- **Modifies NDAA FY 2009, Section 887, Report to Congress on Implementation of EVM in DoD**
  - **Seven elements in NDAA 2009; deletes one, adds four**
  - **Additional elements focus on methods used to establish EVM baselines, ensuring training and qualifications, discussion of contractor EVM systems, discussion of merits of alternatives and plan for implementing recommendations**
- **Impact: Increases scope of report to Congress**

Sec. 303. Expansion of National Security Objectives of the National Technology and Industrial base

- **Adds objective of "Maintaining critical design skills to ensure that the armed forces are provided with systems capable of ensuring technological superiority over potential adversaries" to list of national security objectives (10 USC 2501).**
- **Adds requirement to assess effect of termination of MDAPs to annual defense capability assessment (conducted in consultation with Sec of Commerce and Sec of Energy. (10 USC 2505)**
- **Impact: another assessment**

Sec. 304. Comptroller General Reports on Costs and Financial Information Regarding MDAPs

- Adds objective of "Maintaining critical design skills to ensure that the armed forces are provided with systems capable of ensuring technological superiority over potential adversaries" to list of national security objectives (10 USC 2501).
- Adds requirement to assess effect of termination of MDAPs to annual defense capability assessment (conducted in consultation with Sec of Commerce and Sec of Energy. (10 USC 2505)
- Impact: another assessment

Required Reports

Report	From	To	Due Date
Assessment of previous years cost estimation and analysis activities (unclas ver. Must be posted to DoD public web site)	CAPE	Concurrently to: SECDEF, USD(AT&L), USD(C) and Congress	Annually within 10 days of President's Budget submission
O&S Costs for MDAPs, including advisability of establishing O&S cost baselines	CAPE	SECDEF; SECDEF to Congress	May 2010
Joint Report on DT&E and Sys Engineering Activities	DT&E & SE	Congress	Annually NLT Mar 31
Implementation of Resource Planning for DT&E and Sys Engineering Activities	CAEs w/MDAPs	Congress	Nov 2009
Performance Assessments and Root Cause Analysis Activities	OSD (TBD)	Congress	Annually NLT Mar 1
Technology Maturity & Integration Risk of MDAPs	DDR&E	Congress	Annually NLT Mar 10
Resources Needed to Implement Technology Maturity and Integration Risk Assessments	DDR&E	Congress	Nov 2009
Role of COCOMs in Joint Requirements Process	GAO	Congress	May 2011
Notification of Waiver for Competitive Prototyping Due to Excessive Costs	MDA	Congress and GAO	30 Days after waiver
Funding Changes Due to Critical Cost Growth in MDAPs	OSD	Congress	First SAR in CY after program restructure
Growth in O&S Costs of Major Systems	GAO	Congress	May 2010
Review of Weaknesses In Operations Relating to Financial Information for MDAPs	GAO	Congress	May 2010

Backups

Sec. 101. Cost Assessment & Program Evaluation

Director of Cost Assessment & Program Evaluation. Responsibilities:

- Cost estimation and cost analysis for DoD acquisition programs
- Analysis and advice on matters relating to planning and programming phases of PPBE
- Analysis and advice for resource discussions relating to requirements under consideration in the JROC
- Study guidance for AoAs for MDAPs, and performance of such analysis as directed by the SECDEF
- Review, analysis and evaluation of programs for executing approved strategies and policies
- Assessments of special access and compartmented intelligence programs in coordination with USD(AT&L) and USD(Intel)
- Assessments of alternative plans, programs, and policies with respect to acquisition programs of the DoD
- Leading the assessment of improved analytical skills and competencies within the DoD cost assessment and program

Sec. 101. Cost Assessment & Program Evaluation

Director of Cost Assessment & Program Evaluation - Role in Independent Cost Estimation and Evaluation:

- Prescribes policies and procedures for conduct of cost estimation and cost analysis within DoD
- Cost advisor to SECDEF, USD(AT&L), USD(Comptroller) and Component Heads for ACAT I and ACAT IA Programs
- Issues guidance relating to proper selection of confidence levels in cost estimates
- Issues guidance relating to full consideration of life-cycle management and sustainability costs in ACAT I and IA programs
- Reviews all cost estimates and cost analysis conducted in connection with ACAT I and IA programs
- Conducts independent cost estimates for ACAT I and IA programs for which the USD(AT&L) is the MDA, in advance of:
  - Program certifications for Milestones A and B
  - LRIP Decision (Milestone C)
  - Full Rate Production

Sec. 103. Root Cause Analysis

A root cause analysis with respect to a major defense acquisition program is an assessment of the underlying cause or causes of shortcomings in cost, schedule, or performance of the program, including the role, if any, of—

(1) unrealistic performance expectations;

(2) unrealistic baseline estimates for cost or schedule;

(3) immature technologies or excessive manufacturing or integration risk;

(4) unanticipated design, engineering, manufacturing, or technology integration issues arising during program performance;

(5) changes in procurement quantities;

(6) inadequate program funding or funding instability;

(7) poor performance by government or contractor personnel responsible for program management; or

(8) any other matters.

Sec. 202. Ensuring Competition…

Measures to ensure competition, or the option of competition, (at the prime and subcontract level) may include measures to achieve the following, in appropriate cases if such measures are cost-effective:

(1) Competitive prototyping.

(2) Dual-sourcing.

(3) Unbundling of contracts.

(4) Funding of next-generation prototype systems or subsystems.

(5) Use of modular, open architectures to enable competition for upgrades.

(6) Use of build-to-print approaches to enable production through multiple sources.

(7) Acquisition of complete technical data packages.

(8) Periodic competitions for subsystem upgrades.

(9) Licensing of additional suppliers.

(10) Periodic system or program reviews to address long-term competitive effects of program decisions.

Sec. 204. Changes to Milestone A Certification

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2366a. Major defense acquisition programs: certification required before Milestone A or Key Decision Point A approval

(a) CERTIFICATION.—A major defense acquisition program may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program, **or otherwise be initiated prior to Milestone B approval**, or Key Decision Point B approval in the case of a space program; until the Milestone Decision Authority certifies, after consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs—

(1) that the program fulfills an approved initial capabilities document;

(2) that the program is being executed by an entity with a relevant core competency as identified by the Secretary of Defense;

(3) if the program duplicates a capability already provided by an existing system, the duplication provided by such program is necessary and appropriate; and

(4) that a cost estimate for the program has been submitted and that the level of resources required to develop and procure the system is consistent with the priority level assigned by the Joint Requirements Oversight Council.

(b) NOTIFICATION.—(1) With respect to a major defense acquisition program certified by the Milestone Decision Authority under subsection (a), if the projected cost of the program, at any time prior to Milestone B approval, exceeds the cost estimate for the program submitted at the time of the certification by at least 25 percent, **or the program manager determines that the period of time required for the delivery of an initial operational capability is likely to exceed the schedule objective established pursuant to section 181(b)(5) of this title by more than 25 percent**, the program manager for the program concerned shall notify the Milestone Decision Authority. The Milestone Decision Authority, in consultation with

Sec. 204. Changes to Milestone A Certification

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(2) Not later than 30 days after a program manager submits a notification to the Milestone Decision Authority pursuant to paragraph (1) with respect to a major defense acquisition program, the Milestone Decision Authority shall submit to the congressional defense committees a report that--

(A) identifies the root causes of the cost or schedule growth in accordance with applicable policies, procedures, and guidance;

(B) identifies appropriate acquisition performance measures for the remainder of the development of the program; and

(C) includes one of the following:

(i) A written certification (with a supporting explanation) stating that--

(I) the program is essential to national security;

(II) there are no alternatives to the program that will provide acceptable military capability at less cost;

(III) new estimates of the development cost or schedule, as appropriate, are reasonable; and

(IV) the management structure for the program is adequate to manage and control program development cost and schedule.

(ii) A plan for terminating the development of the program or withdrawal of Milestone A approval, or Key Decision Point A approval in the case of a space program, if the Milestone Decision Authority determines that such action is in the interest of national defense.

Sec. 205. Changes to Milestone B Certification

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§ 2366b. Major defense acquisition programs: certification required before Milestone B or Key Decision Point B approval

a) Certification.--A major defense acquisition program may not receive Milestone B approval, or Key Decision Point B approval in the case of a space program, until the milestone decision authority--

(1) has received a business case analysis and certifies on the basis of the analysis that--

(A) the program is affordable when considering the ability of the Department of Defense to accomplish the program's mission using alternative systems;

(B) the program is affordable when considering the per unit cost and the total acquisition cost in the context of the total resources available during the period covered by the future-years defense program submitted during the fiscal year in which the certification is made;

(C) reasonable cost and schedule estimates have been developed to execute the product development and production plan under the program; and

(D) funding is available to execute the product development and production plan under the program, through the period covered by the future-years defense program submitted during the fiscal year in which the certification is made, consistent with the estimates described in subparagraph (C) for the program;

(2) has received a preliminary design review and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission; and

(3) further certifies that--

(A) appropriate market research has been conducted prior to technology development to reduce duplication of existing technology and products;

(B) the Department of Defense has completed an analysis of alternatives with respect to the

Sec. 205. Changes to Milestone B Certification

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Continued…

(D) the technology in the program has been demonstrated in a relevant environment, **as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Director of Defense Research and Engineering;** and

(E) the program demonstrates a high likelihood of accomplishing its intended mission; and

(F) the program complies with all relevant policies, regulations, and directives of the Department of Defense.

(b) Notification. Changes to Certification.—

(1) The program manager for a major defense acquisition program that has received certification under subsection (a) shall immediately notify the milestone decision authority of any changes to the program that--

A) alter the substantive basis for the certification of the milestone decision authority relating to any component of such certification specified in paragraph (1) or (2) of subsection (a); or

(B) otherwise cause the program to deviate significantly from the material provided to the milestone decision authority in support of such certification.

(2) Upon receipt of information under paragraph (1), the milestone decision authority may withdraw the certification concerned or rescind Milestone B approval (or Key Decision Point B approval in the case of a space program) if the milestone decision authority determines that such certification or approval is no longer valid.

(c) Submission to Congress.— (1)The certification required under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under section 2432 of this title after completion of the certification.

(2) A summary of any information provided to the milestone decision authority pursuant to subsection (b) and a description of the actions taken as a result of such information shall be

Sec. 205. Changes to Milestone B Certification

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(d) Waiver for National Security.—

(1) The milestone decision authority may at the time of Milestone B approval (or Key Decision Point B approval in the case of a space program) or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval (or Key Decision Point B approval in the case of a space program) pursuant to subsection (b)(2), waive'' the applicability to a major defense acquisition program of one or more components (as specified in paragraph (1) or (2) of subsection (a)) of the certification requirement if the milestone decision authority determines that, but for such a waiver, the Department would be unable to meet critical national security objectives.

(2) Whenever the milestone decision authority makes such a determination and authorizes such a waiver--

(A) the waiver, the determination, and the reasons for the determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized; and

(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification components specified in paragraphs (1) and (2) of subsection (a) until such time as the milestone decision authority determines that the program satisfies all such certification components.

(e) Designation of Certification Status in Budget Documentation- Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program receiving a waiver pursuant to subsection (d) shall prominently and clearly indicate that such program has not fully